

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

SSA PACIFIC, INC.)	
)	
SSA,)	
and)	
)	
RONI SIMISOLA, an Individual)	Case No. 20-CA-151433
JOHN STUBBE, an Individual)	Case No. 20-CA-156741
ALAN COUCH, an Individual)	Case No. 20-CA-156786
)	
PACIFIC MARITIME ASSOCIATION)	
)	
SSA,)	
and)	
)	
RONI SIMISOLA, an Individual)	Case No. 20-CA-153169
JOHN STUBBE, an Individual)	Case No. 20-CA-156732
ALAN COUCH, an Individual)	Case No. 20-CA-156792
)	
)	
INTERNATIONAL LONGSHORE AND)	
WAREHOUSE UNION LOCAL 18)	
)	
SSA,)	
and)	
)	
RONI SIMISOLA, an Individual)	Case No. 20-CB-151490
JOHN STUBBE, an Individual)	Case No. 20-CB-156767
ALAN COUCH, an Individual)	Case No. 20-CA-156787
)	
)	

**SSA PACIFIC, INC.,’S REPLY BRIEF IN SUPPORT OF ITS CROSS-EXCEPTIONS TO
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Joseph M. Galosic
LAW OFFICES OF JOSEPH M. GALOSIC
100 Spectrum Center Drive, Suite 600
Irvine, CA 92618
Telephone: (949) 580-0900
Facsimile (949) 580-0903
jglawsic@msn.com

Dated: January 6, 2017

SSA Pacific, Inc., (“SSA” or “Respondent”) submits the following in Reply to the Answering Brief filed by the General Counsel (“GC”) to Respondent’s Cross-Exceptions as follows:

The argument advanced by the GC in its Answering Brief in response to the Respondents’ Cross-Exceptions is based upon the GC’s mistaken reading of the Administrative Law Judge’s (“ALJ”) finding with regard to Rule 12 and a mistaken understanding of the Respondents’ Cross-Appeal. Although in its opening sentence, the GC states that the ALJ “concluded” that Rule 12 “is unlawfully overbroad, because a reasonable employee would construe Rule 12 as a restriction on Section 7 activity” (GC Answering p. 2), the GC fails to cite to the portion of the ALJ Decision in support of the statement.

After citing the cases of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), and *Teamsters Local 876*, 339 NLRB 769 (2003), (GC Answering p. 2) the GC then makes a leap to the erroneous conclusion that “Rule 12’s prohibition against causing an undefined ‘disturbance’ is broad enough to encompass protests, complaints, grievances, and even questions and requests regarding Respondents’ dispatching operation.” (GC Answering p.3). In addition, the GC claims that “the rule could be construed to prohibit protected protests at the dispatch hall . . . “ and “Rule 12 is not merely ambiguous; it is clearly confusing.” (GC Answering p. 4). In so doing, the GC completely ignored the specific findings of the ALJ.

As the ALJ recognized Rule 12 “does not explicitly restrict Section 7 activities. Nor is there any evidence that it was either promulgated in response to protected concerted activity, or has been relied on to punish employees for engaging in protected conduct.” (ALJD 23:25-27). There is no question or dispute that Rule 12 does not explicitly restrict Section 7 activity.

In the ALJ's Decision the ALJ then framed the issue as "whether a reasonable employee would interpret a prohibition on "causing a disturbance" as a restriction on Section 7 conduct or whether the rule's wording is so ambiguous that it could reasonably be interpreted that way." (ALJD 23:27-30). The ALJ specifically stated that when Rule 12 is read in its context "to the extent that Rule 12 governs employees' **conduct during the dispatch itself**, it actually functions as both rule types, in that it identifies "causing a disturbance at the Dispatch Hall" a disqualifying condition for dispatch (emphasis added). (ALJD 23:35-37).

The ALJ then made a specific finding that "based on the parties' long practice of enforcing Rule 12 with the yellow line in the dispatch hall, casuals would reasonably understand that, as applied during the dispatch itself: (a) the rule is aimed at protecting the disruption of dispatch; and (b) they are permitted to engage in protected conduct during the dispatch without being found in violation of Rule 12, as long as they abide by the dispatcher's order to remain behind the yellow line. (ALJD 23:37-41).

In other words, the ALJ specifically found that Rule 12 is not ambiguous or confusing when read in context during dispatch, despite the broad assertion of the GC to the contrary. To this part of the ALJ finding, Respondents take no exception. Although the GC argues that employees are without notice or expectation of what kind of activity can be found to cause a disturbance (GC p.4), that claim flies in the face of the ALJ's finding which is simply not subject to challenge.

Similarly, the GC's claim that Respondents applied the rule against Charging Party Roni Simisola when she exercised her Section 7 right to request a photograph the dispatch sheet is equally erroneous. Charging Party Roni Simisola was disciplined for disrupting dispatch during the dispatch process, when she was in the dispatch hall. The ALJ found that part of Rule 12,

when applied to conduct of employees during the dispatch itself, to be lawful and is not subject to challenge or raised by the Respondents' exceptions.

Instead, it is the next part of the ALJ Decision, which is subject to challenge and raised by the Respondents' exceptions, but not addressed by the GC in its Answering Brief.

Specifically, the part raised by the Respondents' exceptions is;

The problem, however, is that Rule 12 does not merely forbid conduct during dispatch, but rather must be read along with rules listing other conduct disqualifying workers for dispatch (i.e., "refusal to work as directed" and "damage to company property"). Indeed, Rule 12 by its own terms applies to disturbances at the dispatch hall during non-dispatch and also explicitly prohibits causing a disturbance outside the dispatch hall in any "job-related area." It is here, without the help of a yellow line, that an employee would have to be left to ponder whether Rule 12 forbids disrupting the industrial peace at the Port by criticizing Respondents' joint dispatch process, and specifically what conduct would cross that invisible threshold. Would casuals donning anti-Union shirts or chanting anti-Union slogans as they left their work shift constitute a "disturbance" sufficient to result in their permanent loss of dispatch privileges? While Local 18 argues that Rule 12 is necessary to maintain production and discipline and PMA argues that it is merely an extension of the parties' no-strike provision, these rationales cannot justify leaving employees under such circumstances to decide—at their own peril—whether or not to exercise their rights under the Act.

In arriving at this finding, the ALJ's failed to reasonably interpret the Rule in the context in which it appears when analyzing the application beyond the dispatch hall. Rule 12 is posted in the dispatch hall as part of the dispatch rules. [ALJD 6:36-38]. Rule 12 is not posted at the job site. As such, it is not reasonable to conclude that employees would understand the rule to prohibit dissident union activities, such as the wearing of anti-union t-shirts and chanting anti-union slogans outside of the dispatch hall, or even in the dispatch hall for that matter. Such an interpretation is an unreasonable reading of the rule. Further, there was no evidence submitted that any employee ever understood Rule 12 to prohibit dissident union activities, or that Rule 12 was ever applied to punish protected activity.

In addition, although the ALJ recognized that parties can waive employees' right to strike or engage in other concerted activities, the ALJ failed to find that Rule 12 is a lawful waiver. Rule 12 only restricts or prohibits conduct that actually disrupts the dispatch process or work in any other job-related area which is lawfully prohibited by the no-strike clause in the parties' collective bargaining agreement, the Pacific Coast Longshore Contract Document ("PCLCD"). When reasonably read in the context of the PCLCD, and considering its long history of never having been interpreted to constrain peaceful dissident union activity, it is reasonable to conclude that Rule 12 is not a lawful collectively-bargained restriction on concerted activity.

Accordingly, Rule 12 is not ambiguous and does not restrict Section 7 conduct in the dispatch hall during the dispatch process, as the ALJ properly found, and given the history, context and application, it is not ambiguous and does not restrict Section 7 conduct outside the dispatch hall in any job related area. Simply put, the record establishes that employees do not have to decide at their own peril what information is not lawfully subject to such a prohibition. Since the ALJ properly found that Rule 12 does not explicitly restrict Section 7 activities, and there is no evidence that it was either promulgated in response to protected concerted activity, or has been relied on to punish employees for engaging in protected conduct, [ALJD 23:24-27] Rule 12 does not violate the Act.

For the foregoing reasons, Respondent SSA respectfully urges the board to find merit to its Cross-Exceptions to the Administrative Law Judge's decision, and to dismiss the Complaint in its entirety.

Respectfully Submitted,

Dated: January 6, 2017

/s/ Joseph M. Galosic
Joseph M. Galosic
LAW OFFICES OF JOSEPH M. GALOSIC
100 Spectrum Center Drive, Suite 600
Irvine, CA 92618
Telephone: (949) 580-0900
Facsimile (949) 580-0903
jglawsic@msn.com

CERTIFICATE OF SERVICE

I, Joseph M. Galosic, hereby certify that a copy of the foregoing SSA Pacific Inc.'s Brief in Support of Cross Exceptions was served by electronic mail or regular mail on January 6, 2017, upon the following:

Nicole Buffalano
nbuffalano@morganlewis.com

Jonathan C. Fritts
jfritts@morganlewis.com
Counsel for Pacific Maritime Association

Todd C. Amidon,
tamidon@pmanet.org

Robert Remar, Esq.
Rremar@leonardcarder.com

Kirsten Donovan, Esq.
Kirsten.Donovan@ilwu.org
Counsel for ILWU Local 18

David Reeves, Esq.
David.Reeves@nrlb.gov
Counsel for the General Counsel

Roni Simisola
ronizs23@gmail.com

Dated: January 6, 2017

/s/ Joseph M. Galosic

Joseph M. Galosic
LAW OFFICES OF JOSEPH M. GALOSIC
100 Spectrum Center Drive, Suite 600
Irvine, CA 92618
Telephone: (949) 580-0900
Facsimile (949) 580-0903
jglawsic@msn.com